

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 30

APRIL 17, 1996

NO. 16

This issue contains:

U.S. Customs Service

T.D. 96-28 Through 96-32

General Notices

U.S. Court of International Trade

Slip Op. 96-52 **PUBLIC VERSION**

Slip Op. 96-58 and 96-59

Abstracted Decisions:

Classification: C96/24 and C96/25

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 96-28)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts issued May 25, 1995, to January 3, 1996, inclusive, pursuant to subparts A and B, Part 191, Customs Regulations.

In the synopses below are listed for each drawback contract approved under title 19 U.S.C. Section 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded, and the date on which it was approved.

Dated: March 28, 1996.

WILLIAM G. ROSOFF,

Director,

International Trade Compliance Division.

(A) Company: Heath Tecna Aerospace Corp.

Articles: Wing parts; aircraft structural components and fairings

Merchandise: Imported carbon fibre prepreg

Factory: Kent, WA

Proposal signed: September 19, 1995

Basis of claim: Used in

Contract issued by RC of Customs: Long Beach (San Francisco Liquidation Unit), October 3, 1995

(B) Company: Professional's Choice Sports Medicine Products, Inc.

Articles: Medical, industrial and athletic products

Merchandise: Imported nylon, neoprene rubber

Factory: Spring Valley, CA

Proposal signed: March 31, 1995

Basis of claim: Used in

Contract issued by RC of Customs: Long Beach (San Francisco Liquidation Unit), May 25, 1995

(C) Company: STI Optronics, Inc.
Articles: Magnetic insertion devices
Merchandise: Imported NdFeB magnets
Factory: Bellevue, WV
Proposal signed: June 29, 1995
Basis of claim: Appearing in
Contract issued by RC of Customs: Long Beach (San Francisco Liquidation Unit), August 29, 1995

(D) Company: Takata Moses Lake, Inc.
Articles: Automotive airbag inflators
Merchandise: Imported component parts; iron oxide; sodium azide; chemicals
Factory: Moses Lake, WA
Proposal signed: November 2, 1995
Basis of claim: Used in
Contract issued by RC of Customs: Long Beach (San Francisco Liquidation Unit), January 3, 1996

(T.D. 96-29)

SYNOPSIS OF DRAWBACK DECISION

The following is a synopsis of a drawback contract issued October 26, 1993, pursuant to Subpart H, Part 191, Customs Regulations.

In the synopsis below is listed for the drawback contract approved under 19 U.S.C. 1313(d), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded, and the date on which it was approved.

Dated: March 28, 1996.

WILLIAM G. ROSOFF,
Director,
International Trade Compliance Division.

(A) Company: Union Flavors, Inc.
Articles: Flavoring extracts
Merchandise: Domestic tax-paid ethyl alcohol
Factory: Industry, CA
Proposal signed: October 7, 1993
Basis of claim: Used in
Contract forwarded to RC of Customs: Long Beach, October 26, 1993

(T.D. 96-30)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts issued November 7, 1994, pursuant to Subpart I, Part 191, of the Customs Regulations.

In the synopses below are listed for each contract approved under 19 U.S.C. 1313(g), the name of the company, the specified vessels on which drawback is authorized, the merchandise which will be used to manufacture or produce these vessels, the shipyards where the work will be accomplished, the date the proposals were signed, the basis for determining payment, the Regional Commissioner to whom the contracts were forwarded, and the date on which they were approved.

Dated: March 28, 1996

WILLIAM G. ROSOFF,

Director,

International Trade Compliance Division.

(A) Company: Genmar Industries, Inc., Hatteras Yachts Div.
Vessel: Yacht "Hatteras 89"

Merchandise: Two Deutz marine diesel engines

Shipyard: New Bern, NC

Proposal signed: January 14, 1994

Basis of claim: Used in

Contract forwarded to RC of Customs: Long Beach, November 7, 1994

(B) Company: Genmar Industries, Inc., Hatteras Yachts Div.

Vessel: Yacht "Looney Bin"

Merchandise: Two Deutz marine diesel engines

Shipyard: New Bern, NC

Proposal signed: January 14, 1994

Basis of claim: Used in

Contract forwarded to RC of Customs: Long Beach, November 7, 1994

(T.D. 96-31)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MARCH 1996

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:

March 1, 1996	.....	\$0.004126
March 2, 1996	.....	.004126
March 3, 1996	.....	.004126
March 4, 1996	.....	.004135
March 5, 1996	.....	.004145
March 6, 1996	.....	.004151
March 7, 1996	.....	.004137
March 8, 1996	.....	.004121
March 9, 1996	.....	.004121
March 10, 1996	.....	.004121
March 11, 1996	.....	.004125
March 12, 1996	.....	.004136
March 13, 1996	.....	.004137
March 14, 1996	.....	.004139
March 15, 1996	.....	.004137
March 16, 1996	.....	.004137
March 17, 1996	.....	.004137
March 18, 1996	.....	.004139
March 19, 1996	.....	.004148
March 20, 1996	.....	.004157
March 21, 1996	.....	.004141
March 22, 1996	.....	.004137
March 23, 1996	.....	.004137
March 24, 1996	.....	.004137
March 25, 1996	.....	.004148
March 26, 1996	.....	.004151
March 27, 1996	.....	.004129
March 28, 1996	.....	.004156
March 29, 1996	.....	.004149
March 30, 1996	.....	.004149
March 31, 1996	.....	.004149

South Korea won:

March 1, 1996	.....	\$0.001277
March 2, 1996	.....	.001277
March 3, 1996	.....	.001277
March 4, 1996	.....	.001283
March 5, 1996	.....	.001283
March 6, 1996	.....	.001286
March 7, 1996	.....	.001285
March 8, 1996	.....	.001286

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for March 1996 (continued):

South Korea won (continued):

March 9, 1996	.....	\$0.001286
March 10, 1996	.....	.001286
March 11, 1996	.....	.001281
March 12, 1996	.....	.001281
March 13, 1996	.....	.001282
March 14, 1996	.....	.001281
March 15, 1996	.....	.001281
March 16, 1996	.....	.001281
March 17, 1996	.....	.001281
March 18, 1996	.....	.001279
March 19, 1996	.....	.001279
March 20, 1996	.....	.001278
March 21, 1996	.....	.001275
March 22, 1996	.....	.001271
March 23, 1996	.....	.001271
March 24, 1996	.....	.001271
March 25, 1996	.....	.001279
March 26, 1996	.....	.001277
March 27, 1996	.....	.001278
March 28, 1996	.....	.001278
March 29, 1996	.....	.001278
March 30, 1996	.....	.001278
March 31, 1996	.....	.001278

Taiwan N.T. dollar:

March 1, 1996	.....	\$0.036364
March 2, 1996	.....	.036364
March 3, 1996	.....	.036364
March 4, 1996	.....	.036364
March 5, 1996	.....	.036364
March 6, 1996	.....	.036364
March 7, 1996	.....	.036364
March 8, 1996	.....	.036364
March 9, 1996	.....	.036364
March 10, 1996	.....	.036364
March 11, 1996	.....	.036258
March 12, 1996	.....	.036364
March 13, 1996	.....	.036364
March 14, 1996	.....	.036364
March 15, 1996	.....	.036403
March 16, 1996	.....	.036403
March 17, 1996	.....	.036403
March 18, 1996	.....	.036430
March 19, 1996	.....	.036603
March 20, 1996	.....	.036765
March 21, 1996	.....	.036670
March 22, 1996	.....	.036630
March 23, 1996	.....	.036630
March 24, 1996	.....	.036630
March 25, 1996	.....	.036617
March 26, 1996	.....	.036697

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for March 1996 (continued):

Taiwan N.T. dollar (continued):

March 27, 1996	\$0.036657
March 28, 1996 .....	.036697
March 29, 1996 .....	.036630
March 30, 1996 .....	.036630
March 31, 1996 .....	.036630

Dated: April 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96-32)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH 1996

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 96-12 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

Australia dollar:

March 28, 1996	\$0.782100
March 29, 1996 .....	.781500
March 30, 1996 .....	.781500
March 31, 1996 .....	.781500

Finland markka:

March 1, 1996	\$0.218866
March 2, 1996 .....	.218866
March 3, 1996 .....	.218866
March 4, 1996 .....	.218627
March 5, 1996 .....	.218245
March 6, 1996 .....	.217865
March 7, 1996 .....	.217533
March 8, 1996 .....	.216450
March 9, 1996 .....	.216450
March 10, 1996 .....	.216450
March 11, 1996 .....	.217179
March 12, 1996 .....	.217297
March 13, 1996 .....	.217486

FOREIGN CURRENCIES—Variances from quarterly rates for March 1996
 (continued):

Finland markka (continued):

March 14, 1996	.....	\$0.216638
March 15, 1996	.....	.216497
March 16, 1996	.....	.216497
March 17, 1996	.....	.216497
March 18, 1996	.....	.216544
March 19, 1996	.....	.216661
March 20, 1996	.....	.218150
March 21, 1996	.....	.217297
March 22, 1996	.....	.217155
March 23, 1996	.....	.217155
March 24, 1996	.....	.217155
March 25, 1996	.....	.217108
March 26, 1996	.....	.216920
March 27, 1996	.....	.214938
March 28, 1996	.....	.215517
March 29, 1996	.....	.215750
March 30, 1996	.....	.215750
March 31, 1996	.....	.215750

New Zealand dollar:

March 14, 1996	.....	\$0.689000
March 21, 1996	.....	.686900
March 22, 1996	.....	.686900
March 23, 1996	.....	.686900
March 24, 1996	.....	.686900
March 25, 1996	.....	.686800

South Africa, Republic of, rand:

March 1, 1996	.....	\$0.256082
March 2, 1996	.....	.256082
March 3, 1996	.....	.256082
March 4, 1996	.....	.256410
March 5, 1996	.....	.258065
March 6, 1996	.....	.257599
March 7, 1996	.....	.255624
March 8, 1996	.....	.254972
March 9, 1996	.....	.254972
March 10, 1996	.....	.254972
March 11, 1996	.....	.253743
March 12, 1996	.....	.254259
March 13, 1996	.....	.255754
March 14, 1996	.....	.253485
March 15, 1996	.....	.254907
March 16, 1996	.....	.254907
March 17, 1996	.....	.254907
March 18, 1996	.....	.254259
March 19, 1996	.....	.254712
March 20, 1996	.....	.254550
March 21, 1996	.....	.255428
March 22, 1996	.....	.254939
March 23, 1996	.....	.254939
March 24, 1996	.....	.254939
March 25, 1996	.....	.254065
March 26, 1996	.....	.253743

FOREIGN CURRENCIES—Variances from quarterly rates for March 1996
 (continued):

South Africa, Republic of, rand:

March 27, 1996	\$0.250991
March 28, 1996 .....	.249844
March 29, 1996 .....	.251383
March 30, 1996 .....	.251383
March 31, 1996 .....	.251383

Dated: April 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D.96-33)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE:
APRIL 1 THROUGH JUNE 30, 1996

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	\$0.784000
Austria	Schilling	0.095937
Belgium	Franc	0.032830
Brazil	Cruzado	1.012863
Canada	Dollar	0.738116
China, P.R.	Renminbi yuan	0.119705
Denmark	Krone	0.174734
Finland	Markka	0.215983
France	Franc	0.197902
Germany	Deutsche mark	0.674536
Hong Kong	Dollar	0.129299
India	Rupee	0.029197
Iran	Rial	N/A
Ireland	Pound	1.570000
Israel	Shekel	N/A
Italy	Lira	0.000637
Japan	Yen	0.009300
Malaysia	Dollar	0.395101
Mexico	Peso	0.133111
Netherlands	Guilder	0.603064
New Zealand	Dollar	0.686000

FOREIGN CURRENCIES—Quarterly rates of exchange: April 1 through June 30, 1996 (continued):

Country	Name of currency	U.S. dollars
Norway	Krone	\$0.155521
Philippines	Peso	N/A
Portugal	Escudo	0.006534
Singapore	Dollar	0.710732
South Africa, Republic of	Rand	0.250000
Spain	Peseta	0.008025
Sri Lanka	Rupee	0.018674
Sweden	Krona	0.150150
Switzerland	Franc	0.836960
Thailand	Baht (tical)	0.039573
United Kingdom	Pound	1.524400
Venezuela	Bolivar	0.003448

Dated: April 1, 1996.

FRANK CANTONE,

*Chief**Customs Information Exchange.*



U.S. Customs Service

General Notices

APPLICATION FOR RECORDATION OF TRADE NAME: "OMI INDUSTRIES, INC."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "OMI INDUSTRIES, INC.," used by OMI Industries, Inc., a corporation organized under the laws of the State of Ohio, located at 310 Outerbelt Street, Columbus, Ohio 43213.

The application states that the trade name is used in connection with aluminum and steel die-cast products. The merchandise is manufactured in Russia.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before June 3, 1996.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW, (Franklin Court), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW, (Franklin Court), Washington DC 20229 (202-482-6960).

Dated: March 27, 1996.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

[Published in the Federal Register, April 3, 1996 (61 FR 14851)]

DATES AND DRAFT AGENDA OF THE SEVENTEENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the seventeenth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, International Agreements Staff, U.S. Customs Service (202-482-7000) or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (HSC). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be its seventeenth, and it will be held from April 26 to May 10, 1996.

In accordance with Section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the U.S. Department of the Treasury, represented by the U.S. Customs Service, the U.S. Department of Commerce, represented by the Census Bureau, and the U.S. Interna-

tional Trade Commission (ITC), jointly represent the U.S. government at the sessions of the HSC. The Customs Service representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Attachment: Attachment A]

Attachment A
40.021 E

DRAFT AGENDA FOR THE SEVENTEENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE

Monday, April 29 (10 a.m.) to Friday, May 10, 1996

N.B. Questions under Agenda Item VII will be examined first by the presessional Working Party (Wednesday, April 24 (10 a.m.) to Friday, April 26, 1996).

I

ADOPTION OF THE AGENDA

Draft Agenda	Doc. 40.021
Draft Timetable	Doc. 40.022

II

REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention and implementation of the 1996 amendments; acceptances of Recommendations; list of administrations applying an HS-based tariff or statistical nomenclature; list of HS-based tariffs and tariff or statistical nomenclatures available in the Secretariat	Doc. 40.095
1. Report of the Policy Commission (34th Session)	Doc. 40.188
2. Approval of decisions taken by the Harmonized System Committee at its 16th Session	Docs. 39.924 40.094
3. Technical assistance activities of the Nomenclature and Classification Directorate	Doc. 40.025
4. Progress report on the HS Commodity Data Base	Doc. 40.026
5. Co-operation with other international organizations	Doc. 40.027
6. Other	

III

GENERAL QUESTIONS

1. Creation of a database of HS documentation	Doc. 40.028
1. Pre-entry classification information system	Doc. 40.029
2. Co-operation with the Technical Committee on Rules of Origin	Doc. 40.030
3. Survey on the application of the Harmonized System in areas other than Customs tariffs and trade statistics	Doc. 40.031
4. Project for improving classification work and related infrastructures	Doc. 40.007
5. International co-operation for the development of audiovisual training materials on the Harmonized System	Doc. 40.033
6. Possible amendment of Rule 18 of the Harmonized System Committee Rules of Procedures (quorum)	Doc. 40.034
7. Classification enquiries from private firms	Doc. 40.035
8. Other	
(i) Stand-alone HS descriptors	Doc. 40.101
(ii) Non HS codes	Doc. 40.102
(iii) Other	Doc. 40.200

IV

REPORT OF THE SCIENTIFIC SUB-COMMITTEE

1. Report of the 10th Session of the Scientific Sub-Committee	Doc. 40.080
2. Conclusions of the 10th Session of the Scientific Sub-Committee	Doc. 40.037

V

REPORT OF THE HS REVIEW SUB-COMMITTEE

1. Report of the 13th Session of the Harmonized System Review Sub-Committee	Doc. 40.180
1. Matters for decision by the Harmonized System Committee	Doc. 40.039
2. Possible new subheadings for "concentrated fruit juices"	Doc. 40.152
3. Possible amendments to legal texts and Explanatory Notes to avoid problems in distinguishing between sheets obtained by slicing laminated wood and traditional veneer sheets	Doc. 40.153
4. Proposal by the Japanese Administration concerning heading 12.12	Doc. 40.154
5. Classification of industrial microwave ovens	Doc. 40.155
6. HS Review on the basis of trade statistics	Doc. 40.183

VI

RECOMMENDATIONS RELATING TO THE HARMONIZED SYSTEM

1. Possible preparation of a recommendation concerning the reporting of trade data to the UNSD (formerly UNSTAT)	Docs. 40.085 39.210 (HSC/15)
1. Proposed draft recommendation concerning narcotic drugs, psychotropic substances and their precursors	Docs. 40.041 40.194
2. Proposed draft recommendation concerning substances controlled by the Chemical Weapons Convention	Doc. 40.042

VII

<i>REPORT OF THE PRESESSIONAL WORKING PARTY</i>	Doc. 40.190
W.P. 1. Amendments to the Compendium of Classification Opinions arising from the classification of a "Fresh Cheese Cake (frozen)" in subheading 1905.90 and "Cheese Fondue" in subheading 2106.90	Doc. 39.958
W.P. 2. Amendments to the Compendium of Classification Opinions arising from the classification of preparations made from sugar and plant extracts	Doc. 40.002
W.P. 3. Amendments to the Compendium of Classification Opinions arising from the classification of "NICORETTE®" in subheading 2106.90	Doc. 40.004
W.P. 4. Classification Opinion arising from the classification of quartz derived from acid- and heat-treated alaskite ores in subheading 2506.10	Doc. 40.046
W.P. 5. Classification Opinion arising from the classification of "VORNOL CP-4100S" in subheading 3907.20	Doc. 40.047
W.P. 6. Classification Opinion arising from the classification of "Gamma Grip" and "Gamma Hi-Tech Grip" in subheadings 3926.90 and 3919.10, respectively	Doc. 40.048
W.P. 7. Amendments to the Compendium of Classification Opinions arising from the classification of certain picnic cooler bags in subheading 4202.92	Doc. 40.003
W.P. 8. Amendments to the Explanatory Notes to clarify the classification of paper or paperboard/ aluminum foil/plastics products	Doc. 40.050
W.P. 9. Amendments to the Explanatory Notes to headings 84.19 and 85.16 concerning immersion heaters	Doc. 40.051
W.P. 10. Deleted.	
W.P. 11. Classification Opinion arising from the classification in subheading 9009.90 of "6R 90161" and "6R 90168" cartridges, with or without toner, intended for use in photo-copying apparatus	Doc. 40.053
W.P. 12. Classification Opinion arising from the classification of a motion simulation theatre system in heading 95.08	Doc. 40.054
W.P. 13. Classification Opinion arising from the classification of articles covered with precious metal in heading 96.02	Doc. 40.055

VIII

FURTHER STUDIES

1. Classification of Konjac jelly powder ("Glucomannan PROPOL®")	Doc. 40.057
2. Classification of certain vitamin-based preparations	Doc. 39.654 (HSC/16)
3. Classification of products based on "cultures of micro-organisms"	Docs. 40.060 39.566 (HSC/16)
4. Possible amendment to the Explanatory Note to heading 33.02	Doc. 40.061
5. Possible amendment of Note 4 to Chapter 32 and Note 6(a) to Chapter 39 to clarify the scope of the term "solutions"	Doc. 40.062
6. Classification of "GENSER" modified salt	Docs. 40.063 39.644 (HSC/16)
7. Classification of lottery tickets	Doc. 40.064
8. Possible amendment of the Explanatory Note to heading 49.11 to include documents for identification purposes	Doc. 40.056
9. Classification of "FILTRAIR" filters	Doc. 40.066
10. Classification of mosquito nets	Doc. 40.067
11. Possible new Subheading Explanatory Note to subheadings 8414.51 and 8414.59 concerning fans	Docs. 40.068 40.193
12. Classification of CD-ROM drives	Docs. 40.069 40.192
13. Classification of toilet sets	Doc. 40.070
14. Interpretation of General Interpretative Rule 2(a)	Doc. 40.071
15. Classification of "Cheese Food—"Bayernland""	Doc. 40.086
16. Proposal by Brazil to amend the Explanatory Note to heading 29.07	Doc. 40.036
17. Possible amendment of the Explanatory Note to heading 49.11 to exclude cards with a magnetic stripe	Doc. 40.065

IX

NEW QUESTIONS

1. Classification of tropical fruit preserved by the addition of sugar and drying	Docs. 40.084 39.720 (HSC/16)
2. Classification of "topped crude oils" used as refinery feedstocks	Doc. 39.769 (HSC/16)
3. Meaning of the terms "ailment" and "disease" in Chapter 30	Doc. 39.756 (HSC/16)
4. Classification of certain can sealing compounds	Doc. 39.671 (HSC/16)
5. Classification of certain magnesium carbon ("Mag C") bricks	Doc. 39.772 (HSC/16)
6. Classification of Buddhist altar fittings (Butsugu)	Doc. 39.767 (HSC/16)
7. Distinction between optical fibre cables of headings 85.44 and 90.01	Doc. 39.728 (HSC/16)
8. Classification of glycerol esters	Docs. 40.073 40.195
9. Classification of "pick-up" vehicles	Doc. 40.083
10. Classification of a "Firstsounds FS002" prenatal listening kit	Doc. 40.074
11. Classification of "aerosol valves"	Doc. 40.079
12. Classification of certain transdermic administration systems	Doc. 40.082
13. Classification of a hydrogen peroxide manufacturing plant	Doc. 40.091

NEW QUESTIONS—continued

14. Classification of of "Tecnol Post-Op" shoes and possible amendment to Chapter 90 to clarify the scope of the term "orthopaedic appliances" in heading 90.21	Doc. 40.075
15. Request by the ICAO for simplification of aircraft parts in the Harmonized System	Doc. 40.103
16. Classification of "wood flooring strips"	Doc. 40.104
17. Classification of damaged motor vehicles	Doc. 40.108
18. Possible amendment of Chapter 95 concerning the classification of toys for pets	Doc. 40.109
19. Proposed amendment of headings 49.07 and 97.04 and Note 1(a) to Chapter 97 concerning unused postage, revenue or similar stamps	Doc. 40.110
20. Classification of various items of networking equipment	Doc. 40.140
21. Classification of "Bandag" pre-cured tread rubber	Doc. 40.141
22. Classification of the "LP 16 Junior" label printer	Doc. 40.142
23. Classification of certain GEL preparations	Doc. 40.146
24. Amendments to the Explanatory Notes to correct errors or shortcomings and to align the English and French versions	Doc. 40.058
25. Classification of the "Media Composer 1000" system	Doc. 40.179
26. Classification of the "PCTV" multimedia personal computer	Doc. 40.186
27. Possible amendments to the Explanatory Note to heading 59.06	Doc. 40.189

X**OTHER BUSINESS**

List of questions which might be examined at a future session	Doc. 40.072
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XI**DATES OF THE NEXT SESSIONS*****SCIENTIFIC SUB-COMMITTEE***11th Session*

Monday, June 24, 1996
 Friday, June 28, 1996

****HS REVIEW SUB-COMMITTEE***14th Session*

Monday, September 2, 1996
 Tuesday, September 10, 1996

****HARMONIZED SYSTEM COMMITTEE***Working Party*

Wednesday, October 23, 1996
 Friday, October 25, 1996

18th Session

Monday, October 28, 1996
 Friday, November 8, 1996

^{*}The date for the 11th Session of the Scientific Sub-Committee is subject to confirmation by the Chairman of the Scientific Sub-Committee.

^{*}The dates for the 14th Session of the Review Sub-Committee and the 18th Session of the Harmonized System Committee are subject to approval by the Council.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 2, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MARVIN M. AMERNICK.
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

**WITHDRAWAL OF PROPOSED REVOCATION OF CUSTOMS
RULING LETTERS RELATING TO TARIFF CLASSIFICATION
OF PORTABLE BAR CODE SCANNING DEVICES**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of tariff classification ruling letters.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to revoke ruling letters concerning the tariff classification of portable bar code scanning devices. Notice of the proposed revocation of these rulings was published on February 14, 1996, in the CUSTOMS BULLETIN, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057).

EFFECTIVE DATE: April 17, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Tariff Classification Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), Customs published a notice on February 14, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 7, proposing to revoke New York Ruling Letter (NY) 894422, issued by the Area Director of Customs, New York Seaport, on February 7, 1994, and

NY 896418, issued by the Area Director of Customs, New York Seaport, on April 6, 1994. All of the comments received in response to the notice opposed the proposed revocations.

In NY 894422, the Symbol Technologies, Inc., PDF 1000 portable bar code scanner was held to be classifiable under subheading 8471.92.84 (now, 8471.60.80), Harmonized Tariff Schedule of the United States (HTSUS), which provides for other input units for ADP machines: optical scanners. Plastic housings for the PDF 1000 were classified under subheading 8473.30.50, HTSUS, which provides for other parts and accessories of the machines of heading 8471, HTSUS. In 896418, the Symbol Technologies, Inc., LS 2000II hand-held scanner, which was principally used with point-of-sale devices, was held to be classifiable under subheading 8473.29.00, HTSUS, which provides for parts and accessories of the machines of heading 8470, HTSUS (cash registers). After carefully reviewing the submitted comments and, once again, reviewing the scope of chapters 84, 85 and 90, HTSUS, and the structure of the tariff schedule as it pertains to the classification of devices incorporating "optical elements," we find it unnecessary to revoke NY 894422 and NY 896418.

Generally, "optical instruments and appliances" are classified within chapter 90. Articles of chapter 90 are excluded from several sections of the tariff schedule, including section XVI, which covers chapters 84 and 85. See Section XVI, note 1(m) (for exceptions to this rule, *see, e.g.*, Chapter 90, note 1(g)(h)). Thus, if a device is an "optical instrument or appliance," as defined by additional U.S. note 1(c) to chapter 90, and it is not excluded by note 1 to chapter 90, it must be classified in one of the many chapter 90 headings that cover "optical" devices: for example, heading 9014 (navigational instruments); heading 9015 (surveying, hydrographic, oceanographic, hydrological, meteorological or geophysical instruments); heading 9018 (medical, surgical, dental or veterinary instruments); heading 9027 (instruments for physical or chemical analysis; various measuring or checking instruments); and heading 9031 (other measuring or checking instruments), HTSUS. Heading 9013, HTSUS, is the basket provision for optical instruments and appliances within chapter 90. The heading covers "other optical instruments and appliances, not specified or included elsewhere in this chapter."

Additional U.S. note 1(c) to chapter 90 provides that, for the purposes of chapter 90, the terms *optical appliances* and *optical instruments* "refer only to those appliances and instruments which incorporate one or more optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for **some other subsidiary purpose** (emphasis added). Customs has defined the term "subsidiary" as follows: "[s]erving to supplement or assist * * * [s]econdary in importance: subordinate." *See* HQ 088941, dated January 16, 1992 (*citing* Webster's II New Riverside University Dictionary (1984), pg. 1155).

The bar code scanning devices incorporate a mirror which, in the process of reading a bar code symbol, assists in both the production of the scan line and the production of the signal. The mirror, arguably, serves to supplement or assist in the performance of the scanner's primary function. However, it is our opinion that the scanner, and devices similar to the scanner, which incorporate a laser diode, one or more optical elements (such as a mirror, prism or lens), and significant electrical or mechanical features (such as a decoder, digitizer, or motor), were not intended to be classified as "optical instruments or appliances" within chapter 90.

Similar devices incorporating laser diodes, optical elements and various electrical and/or mechanical features, include the laser printers, CD-ROM drives, document scanners and optical mice of heading 8471, HTSUS, the compact disc players of heading 8519, HTSUS, and the laser disc players of heading 8521, HTSUS. The optics of these devices are considered "subsidiary" for tariff classification purposes, and therefore, the scanners, laser printers, CD-ROM drives, document scanners, optical mice, compact disc players, laser disc players and similar devices, cannot be classified as "optical instruments or appliances" within chapter 90. Accordingly, Customs is withdrawing its proposal to revoke NY 894422 and NY 896418 as they reflect the proper classification of the merchandise at issue.

Dated: March 28, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

MODIFICATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF PORTABLE DATA COLLECTION TERMINALS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying two rulings pertaining to the tariff classification of portable data collection terminals. Notice of the proposed modification was published February 14, 1996, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 17, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Tariff Classification Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 14, 1996, Customs published a notice in the CUSTOMS BULLETIN, Volume 30, Number 7, proposing to modify New York Ruling Letter (NY) 896417, issued by the Area Director of Customs, New York Seaport, on April 6, 1994, and NY 802011, issued on September 19, 1994. In NY 896417, the Symbol Technologies, Inc., PDT 3100 portable data collection terminal with optional scanner was held to be classifiable under subheading 8471.20.00 (now, 8471.30.00 or 8471.41.00), Harmonized Tariff Schedule of the United States (HTSUS), which provides for digital automatic data processing (ADP) machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined. Parts for the terminal were classified under subheading 8473.30.50, HTSUS, which provides for other parts and accessories of the machines of heading 8471, HTSUS. In NY 802011, the Symbol Technologies, Inc., PDT 3300 and PDT 3300IS portable data collection terminals were also held to be classifiable under subheading 8471.20.00, HTSUS, while parts of these terminals were classified under subheading 8473.30.50, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY 896417 and NY 802011 to reflect the proper classification of the portable data collection terminals under subheading 8471.92.10 (now, 8471.60.10), HTSUS, which provides for combined input/output units for ADP machines. The PDT 3100 with scanner is a General Rule of Interpretation (GRI) 3(b), HTSUS, composite good, and its "essential character" is provided by its terminal component. This component, and therefore the PDT 3100 with scanner, are classifiable under subheading 8471.92.10, HTSUS. The PDT 3300, PDT 3300IS and the PDT 3100, without the scanner option, are also classifiable under this subheading. Parts of the PDT 3100, PDT 3300 and PDT 3300IS were properly classified in NY 896417 and NY 802011. Headquarters Ruling Letter 956839 modifying NY 896417 and NY 802011 is set forth in an attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 28, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 28, 1996.

CLA-2 RR:TC:MM 956839 LTO

Category: Classification
Tariff No. 8473.30.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 W. Ash Street, STE 1200
San Diego, CA 92101-3213

Re: IA 43/94; portable data collection terminals; PDT 3100 portable data computer with laser scanner option; base assembly with speaker; HQs 083187, 088941, 952862, 957028; NYs 813679, 842537; NYs 802011, 896417 modified; heading 9013; GRI 3(b); GRI 6; "freely programmable;" section XVI, note 2(a); chapter 84, note 5(A)(B); chapter 90, note 2(a); chapter 90, additional U.S. note 3.

DEAR PORT DIRECTOR:

This is in response to your memorandum dated June 29, 1994 [Clas-1:CO MM], requesting the classification of a "base assembly with speaker" for the PDT 3100 Portable Data Computer with Laser Scanner Option, manufactured by Symbol Technologies, Inc., under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY 896417, issued by the Area Director of Customs, New York Seaport, on April 6, 1994, the PDT 3100 with scanner, and in NY 802011, issued on September 19, 1994, the PDT 3300 and PDT 3300IS, were held to be classifiable under subheading 8471.20.00, HTSUS, which provides for "[d]igital automatic processing machines containing in the same housing at least a central processing unit and an input and output unit, whether or not combined" (i.e., laptop computers). Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 802011 and NY 896417 was published February 14, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 7.

Facts:

The subject articles are "base assemblies with speakers" for the PDT 3100 Portable Data Collection Terminal (PDT 3100), which is a small, hand held terminal that is ideal for a wide range of data tracking applications, such as, package and asset tracking, electronic ordering systems and in-store retail. The PDT 3100 has a 35-key keyboard, 256K of NVM for program storage, a 4 x 20 supertwist display and 640K RAM for data collection. The PDT 3100 is normally sold with an optional laser scan device that fits on the end of the unit. Without the optional laser scan device, the PDT 3100 does not incorporate any optical components.

Issue:

Whether the "base assemblies with speakers" for the PDT 3100 terminal are classifiable as parts of ADP units under heading 8473, HTSUS, or as parts of optical appliances or instruments under heading 9013, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

Because the "base assembly with speakers" is a specially designed part of the PDT 3100 terminal and is not a "good included" in any chapter 84, 85 or 90 heading, it is necessary to determine the classification of the terminal. See section XVI note 2(a); chapter 90, note 2(a), HTSUS. The headings under consideration are as follows:

8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included

9013 Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof

Heading 8471, HTSUS, covers both automatic data processing (ADP) machines and units thereof. Note 5(A) to chapter 84, HTSUS, defines the term *automatic data processing machines* processing machines for purposes of this heading. The definition is expressed in terms of the abilities an ADP machine must possess. Note 5(A)(a)(2) to chapter 84 states that digital ADP machines must be capable of "being freely programmed in accordance with the requirements of the user." The PDT 3100 terminal does not meet this definition.

The PDT 3100 terminal, which has a very small screen and keypad, is not a "general purpose" machine like a standard laptop or desktop terminal, nor does it provide the general purpose display capability of these machines. See HQ 952862, dated November 1, 1994 (regarding the "freely programmable" requirement). The PDT 3100 terminal is designed for specific applications (i.e., package and asset tracking, electronic ordering systems and in-store retail), and, unlike a standard laptop or desktop terminal, cannot be programmed by the user to perform word processing, make a spreadsheet, play games, etc. Although it has some processing capability, the PDT 3100 terminal is not "freely programmable," and therefore, is not an ADP machine. Accordingly, the PDT 3100 terminal cannot be classified under subheading 8471.20.00 (now, 8471.30.00 or 8471.41.00), HTSUS.

With regard to the classification of separately housed units of ADP machines, note 5(B) to chapter 84, HTSUS (for changes, see 1996 version of HTSUS), provides as follows:

Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:

- (a) It is connectable to the central processing unit either directly or through one or more other units; and
- (b) It is specifically designed as a part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

Such units entered separately are also to be classified in heading 8471.

The PDT 3100 terminal is an ADP unit, as it connects to the host computers central processing unit and accepts and delivers data which can be used by the ADP system. Specifically, the PDT 3100 terminal is classifiable under subheading 8471.92.10 (now, 8471.60.10), HTSUS, which provides for combined input/output units. The PDT 3100 itself does not incorporate any "optical" components. Thus, classification of the terminal as an optical instrument under heading 9013, HTSUS, was not a consideration.

However, when imported with the scanner, the PDT 3100 terminal consists of an ADP input/output unit—the terminal—and a device which, arguably, is classifiable an optical instrument, not specified or included elsewhere in chapter 90, under heading 9013, HTSUS. The scanner incorporates an optical element (mirror) that is used in the device's scanning process. However, it is our opinion that the scanner, and devices similar to the scanner, which incorporate a laser diode, one or more optical elements (such as a mirror, prism or lens), and significant electrical or mechanical features (such as a decoder, digitizer, or motor), were not intended to be classified as "optical instruments or appliances" within chapter 90.

Similar devices incorporating laser diodes, optical elements and various electrical and/or mechanical features, include the laser printers, CD-ROM drives, document scanners and optical mice of heading 8471, HTSUS, the compact disc players of heading 8519, HTSUS, and the laser disc players of heading 8521, HTSUS. See, e.g., NY 813679, dated August 15, 1995 (CD-ROM drives); HQ 083187, dated October 16, 1989 (optical mice); and NY 842537, dated June 29, 1989 (compact disc players). The optics of these devices are considered "subsidiary" for tariff classification purposes, and therefore, the scanner portion of the PDT 3100, laser printers, CD-ROM drives, document scanners, optical mice, compact disc players, laser disc players and similar devices, cannot be classified as "optical instruments or appliances" within chapter 90. See Additional U.S. note 3 to chapter 90, HTSUS (defining "optical instruments" for chapter 90 purposes); HQ 088941, dated January 16, 1992 (defining "subsidiary"). The optional scanner portion of the PDT 3100 is *prima facie* classifiable under subheading 8471.92.84 (now, 8471.60.80), HTSUS, which provides for other input or output units: optical scanners.

As there is no single subheading that covers the PDT 3100 with scanner, it is necessary to resort to GRI 3, HTSUS, which governs the classification of goods that are, *prima facie*, classifiable under two or more headings. This rule is made applicable at the subheading level by GRI 6. GRI 3(a) requires that the heading (subheading) which provides the most specific description shall be preferred to headings (subheadings) providing a more general description. However, when two or more headings (subheadings) each refer to part only of the components contained in a composite good, those headings (subheadings) are to be regarded as equally specific in relation to those goods. Subheadings 8471.92.10 and 8471.92.84, HTSUS, each refer to part only of the PDT 3100 with scanner. Accordingly, no single subheading provides a specific description of the entire device.

GRI 3(b), HTSUS, provides that "composite goods consisting of different materials or made up of different components, * * * which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." The PDT 3100 terminal is a combined input/output unit that is "ideal for a wide range of data intensive applications." The scanner option "offers a cost-effective way to maximize * * * productivity through laser scanning." While the scanner option enhances the input capabilities of the PDT 3100, the PDT 3100 terminal functions as a sophisticated input/output device without it. Moreover, the terminal portion of the PDT 3100, when imported with the scanner, represents two-thirds of the total cost of the entire unit. Accordingly, the PDT 3100 terminal gives the unit its "essential character," and the PDT 3100 with scanner is therefore classifiable under subheading 8471.92.10, HTSUS. Because the PDT 3100 with scanner is classifiable as an ADP unit, it is unnecessary to discuss whether the device is classifiable as an "optical reader [] * * * not elsewhere specified or included (emphasis added)," under subheading 8471 99.90 (now, 8471.90.10), HTSUS. The "base assembly with speakers" for the PDT 3100 is classifiable as a part under subheading 8473.30.50, HTSUS, which provides for other parts and accessories for the machines of heading 8471, HTSUS.

In NY 896417, issued by the Area Director of Customs, New York Seaport, on April 6, 1994, the PDT 3100 with scanner, and in NY 802011, issued on September 19, 1994, the PDT 3300 and PDT 3300IS, were held to be classifiable under subheading 8471.20.00, HTSUS, which provides for "[d]igital automatic processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined" (i.e., laptop computers). Like the PDT 3100 and PDT 3100 with scanner, the PDT 3300 and PDT 3300IS do not meet the definition of "ADP machine" found in note 5(A) to chapter 84, HTSUS. Rather, the PDT 3100, PDT 3100 with scanner (according to GRI 3(b)), PDT 3300 and PDT 3300IS terminals, are classifiable as combined input/output units under subheading 8471.92.10, HTSUS. NY 802011 and 896417 are modified accordingly.

Holding:

The "base assembly with speakers" for the PDT 3100 Portable Data Computer with Laser Scanner Option is classifiable under subheading 8473.30.50, HTSUS, which provides for other parts and accessories for the machines of heading 8471, HTSUS. The corresponding rate of duty for articles of this subheading is *free*.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

**PROPOSED REVOCATION OF RULING LETTER RELATING
TO TARIFF CLASSIFICATION OF AN INFANT WALKER
CUSHIONED SEAT**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an infant walker cushioned seat. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 17, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an infant walker cushioned seat. Comments are invited on the correctness of the proposed ruling.

In Headquarters Ruling Letter (HRL) 950309, dated December 4, 1991, an infant walker cushioned seat was classified under subheading 9404.90.20, Harmonized Tariff Schedule of the United States (HTSUS), which provides, in pertinent part, for pillows, cushions and similar furnishings. HRL 950309 is set forth as "Attachment A" to this document.

Although the subject seat is stuffed or fitted and provides cushioning for a child, we believe its condition is advanced beyond that of a cushion. The article is a structurally necessary part of the infant walker. The cushioned seat creates the place where the child will sit. As such, the cushioned seat component is an identifiable furniture part classifiable

under subheading 9401.90.50, HTSUS, which provides for parts of other seats.

Customs intends to revoke HRL 950309 to reflect the proper classification of the infant walker cushioned seat. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HRL) 958539 revoking HRL 950309 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: April 2, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 4, 1991.
CLA-2 CO:R:C:T 950309 CC
Category: Classification
Tariff No. 9404.90.2000

Ms. JANE HENRY GOMEZ
GRACO CHILDREN'S PRODUCTS, INC.
THOUSAND OAKS CORPORATE CENTER
Morgan Way
Morgantown, PA 19543

Re: Classification of an infant walker seat cushion; classifiable in Heading 9404.

DEAR Ms. GOMEZ:

This letter is in response to your inquiry of August 5, 1991, requesting the tariff classification of an infant walker seat cushion. A sample was submitted for examination.

Facts:

The submitted sample is the seat portion of a children's walker. The bucket-shaped item measures approximately 40 centimeters in height and 43 centimeters in width. This merchandise is made of an outer layer of woven polyester fabric and has an inner layer of foam padding. The bottom of the item has two holes through which the child's legs will protrude. The front and side rims have a total of five metal grommets which will be used to attach this merchandise to the walker frame. The rear rim has extra padding, presumably to supply additional back and head support. Behind this additional padding is a flap with three additional grommets used to attach this article to its frame. The frame will also be imported, but in separate shipments from the walker seat cushion.

Issue:

Whether the merchandise at issue is classifiable in Heading 9401 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) or in Heading 9404, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be

determined according to the terms of the headings and any relative section or chapter notes.

Heading 9401, HTSUSA, provides for seats and parts thereof. Heading 9404, HTSUSA, provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered.

The Explanatory Notes (EN) to Heading 9401 state that separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastics whether or not covered, are excluded (Heading 9404) even if they are clearly specialized as parts of upholstered seats (e.g., settees, couches, sofas).

In Headquarters Ruling Letter (HRL) 089018, dated August 9, 1991, we ruled that an infant car seat cushion/cover is classifiable in Heading 9404. Concerning the issue of whether such merchandise is classifiable in Heading 9401 or Heading 9404, we stated the following:

The EN to heading 9404, HTSUSA, includes therein "[a]rticles of bedding and similar furnishings [, including cushions,] which are * * * stuffed or internally fitted with any material * * *." The above description of the infant's car seat cover, which is internally fitted where such fitting would be required for efficient use of the merchandise, clearly meets the definition of cushions. As seat cushions are specifically excluded from heading 9401 (see EN to that heading), classification in heading 9404, HTSUSA, is appropriate.

The merchandise at issue is essentially a seat cushion or cover used in an infant's walker. Being similar to the merchandise of HRL 089018, the submitted infant walker seat cushion is classifiable in Heading 9404.

Holding:

The merchandise at issue is classified under subheading 9404.90.2000, HTSUSA, which provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered, other, pillows, cushions and similar furnishings, other. The rate of duty is 6 percent *ad valorem*. No textile category is currently assigned to merchandise classified under this subheading.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:TC:MM:MMC
Category: Classification
Tariff No. 9401.90.50

JOHN H. QUALEY
ROGERS & BROWN
P.O. Box 20160
Charleston, SC 29413-0160

Re: Reconsideration of HRL 950309: cushioned seat for infant walker, Graco Entertainer; HRL 089018; NYRL 815471; EN 94.01, 94.04.

DEAR MR. QUALEY:

This is in response to your letter, dated September 6, 1995, on behalf of Graco Children's Products (Graco), requesting the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two imported parts of the Graco Entertainer play station; a cushioned seat and a musical module. According to your letter, the balance of the

unit will be made and assembled in the U.S. A sample of the cushioned seat was submitted for our examination.

In New York Ruling Letter (NYRL) 815471 dated October 26, 1995, the Director, Customs National Commodity Specialist Division, advised Graco that the musical module was classifiable under subheading 8543.80.98, HTSUS, which provides for other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. This ruling letter will address the cushioned seat.

Additionally, in Headquarters Ruling Letter (HRL) 950309 dated December 4, 1991, Graco was advised that a cushioned seat for an infant walker was classifiable under subheading 9404.90.20, HTSUS, as other pillows, cushions and similar furnishings. After review of HRL 950309, we now believe that the infant walker cushioned seat is classifiable under subheading 9401.90.50, HTSUS, as a seat part.

Facts:

The Graco Entertainer cushioned seat is made of a 65 percent polyester and 35 percent cotton shell with an inner layer of polyester fiberfill. The bottom of the item has two holes through which a child can place his/her legs. It attaches to the frame of the Entertainer by means of metal grommets.

The infant walker cushioned seat the subject of HRL 950309 is bucket-shaped and measures approximately 40 centimeters in height and 43 centimeters in width. Its outer layer is a woven polyester fabric with an inner layer of foam padding. The bottom has two holes through which a child's legs can protrude. The front and side rims have metal grommets which will be used to attach the seat to the walker frame. The rear rim has extra padding, to supply additional back and head support. Behind this additional padding is a flap with additional grommets. These grommets are used to attach this article to its frame.

Issue:

Are the Graco Entertainer cushioned seat and infant walker cushioned seat classifiable as seats under heading 9401 or as a cushions under heading 9404?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *. The subheadings under consideration are as follows:

9401.90.50	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Other: Other.
9404.90.20	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eider downs, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other.

Note 3(b) to Chapter 94, HTSUS, states that goods described in heading 9404, entered separately, are not to be classified in headings 9401, 9402 or 9403 as parts of goods. Therefore, we must determine whether the subject articles are "cushions" of heading 9404, which would disqualify them from classification under heading 9401, or whether they are "seats" or parts of "seats" of heading 9401.

In an effort to determine if the subject articles are considered "cushions" or "seats" for tariff purposes, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be consulted. The ENs, although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128, (August 23, 1989). EN Gen 94, p. 1574-75, states, in pertinent part, that:

* * * Headings 94.00 to 94.03 cover articles of furniture of any material (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered.

* * * PARTS

This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere * * *.

According to the general ENs, a seat remains classifiable as a piece of furniture even if it is stuffed or covered. Additionally, if a seat is one part of a larger piece of furniture it remains classifiable as furniture under a parts provision. EN 94.01, p. 1575-76, states in pertinent part, that:

* * * this heading covers all seats * * * for example: Lounge chairs, arm-chairs, folding chairs, deck chairs, infants' high chairs and children's seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, stools (such as piano stools, draughtsmen's stools, typists, stools, and dual purpose stool-steps).

PARTS

The heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and armrests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery.

Separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastics whether or not covered, are excluded (heading 94.04) even if they are clearly specialized as parts of upholstered seats (e.g., settees, couches, sofa's). Woven these articles are combined with other parts of seats, however, they remain classified in this heading. They also remain in this heading when presented with the seats of which they form part.

EN 94.04, p. 1579-80, states, in pertinent part, that:

This heading covers:

- (A) XXX
- (B) Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.).
For example:
 - (1) XXX
 - (2) Quilts and bedspreads (including counterpanes, and also quilts for baby-criages), eiderdowns and duvets (whether of down or any other filling), mattress-protectors (a kind of thin mattress placed between the mattress itself and the mattress support), bolsters, pillows, cushions, pouffes, etc. * * *

See the Explanatory Note to heading 94.01 concerning cushions or mattresses having the character of parts of seats.

In HRL 950309, we stated that the cushioned seat for the infant walker was essentially similar to the infant car seat cushion/cover ruled on in HRL 089018 dated August 9, 1991. Upon review of the infant car seat cushion/cover and cushioned seat for an infant walker, we have come to the conclusion that they are in fact different in form and function.

The car seat cover of HRL 089018 is shaped to function as a seat covering. The cushion is attached to a car seat by pulling the harness straps and buckle through pre-existing slits in the cushion, threading loops attached to the cushion through openings in the plastic seat and refastening them onto tabs, fitting the cushion over the sides of the seat and over the bottom front lip of the seat, securing the cushion to the seat by plastic side clips and a three-pronged plastic clip at the bottom and wrapping the elasticized top of the cushion around the top back lip of the seat. It does not function independently as the child's car seat.

The cushioned seat portion of the infant walker is bucket shaped and has two holes at the bottom through which a child's leg will protrude. The front and side rims have metal grommets which will be used to attach the seat to a frame. The cushioned seat for the infant walker actually creates the seat where the child will sit to use the walker.

Although the Entertainer and infant walker cushioned seats are stuffed or fitted and provide cushioning for a child, we believe their condition is advanced beyond that of a cushion. The articles are structurally necessary parts of both the Entertainer and infant walker. The cushioned seat creates the place in both the Entertainer and infant walker, where the child will sit. As such, the cushioned seat is an identifiable furniture part.

We recognize that the exemplars of EN 94.01 exclude from the heading specialized parts (such as cushions) of otherwise structurally complete seats. However, unlike an upholstered seat which may be used without its cushion, the Graco Entertainer and walker cannot be used without the subject cushioned seats.

Holding:

The subject cushioned seats for the Graco Entertainer and infant walker are classifiable under subheading 9401.90.50, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: parts: other: other. The applicable rate of duty is 2.4 percent *ad valorem*. No textile category is currently assigned to merchandise classified under this subheading. HRL 950309 is revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

**PROPOSED MODIFICATION OF CUSTOMS RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF CERAMIC
LUMINARIA**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of ceramic luminaria. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 17, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Food and Chemicals Classification Branch, (202-482-6958).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to ceramic luminaria. Comments are invited on the correctness of the proposed ruling.

In Headquarters Ruling Letter (HRL) 085343, dated December 7, 1989, a product identified as a "Ceramic Halloween candle holder" was held to be classifiable under subheading 9505.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." HRL 085343 is set forth as "Attachment A" to this document.

At this time, it is Customs position that luminaria do not meet the criteria for festive articles. Luminaria are ceramic or plastic bags with candles inside, which are not traditionally used or associated with Halloween or any specific festive occasion. *See* HRL 957954, dated October 12, 1995. The subject articles are rectangular ceramic candle holders that are shaped like paper bags, and have holes representing eyes, a nose, and a mouth. The tops of these luminaria are open and have a large opening in the back to accommodate a candle placed in the base of the ceramic.

It is our determination that the products at issue, rectangular shaped ceramic luminaria, are specifically described by heading 6913, HTSUSA, which provides for statuettes and other ornamental ceramic articles. Clearly, the articles may be used for interior or exterior decoration and to ornament a mantelpiece or shelf. It may also be used as a knickknack in a display cabinet. Accordingly, Customs intends to modify HRL 085343 to reflect the proper classification of these ceramic luminaria under subheading 6913.90.5000, HTSUSA, which provides for "Statuettes and other ornamental ceramic articles: Other: Other: Other." This provision is dutiable at 6.6 percent *ad valorem* under the general column one rate. Before taking this action, consideration will be given to any written comments timely received. Proposed HRL 958484, revoking HRL 085343 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: April 2, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 7, 1989.

CLA-2 CO:R:C:G 085343 JLJ

Category: Classification

Tariff No. 9505.90.6000

MS. BRENDA A. JACOBS
SHARRETT, PALEY, CARTER & BLAUVELDT
1707 L. Street, N.W.
Washington, DC, 20036.

Re: Ceramic Halloween candle holders.

DEAR MS. JACOBS:

You requested tariff classifications under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for two decorative ceramic candle holders imported from Taiwan. You submitted samples of each, along with your request.

Facts:

The Halloween Candle Holder (No. 32-61-69) is a decorative ceramic candle holder shaped like a pumpkin. It is painted orange, with a green stem on top. The bottom of the pumpkin is open, to accommodate the placement of a candle. Another small opening at the stem area allows candle smoke to escape. Holes representing eyes, a nose and a mouth give the candle holder a face, like a jack-o'-lantern. The Halloween Candle Holder is a ceramic representation of a traditional Halloween pumpkin carved with a face.

The Luminaria (No. 32-61-23) is rectangular in shape. It is a decorative ceramic candle holder which is orange in color, shaped somewhat like a paper bag, and has holes representing eyes, a nose and a mouth. Tiny black lines accent the eyes. The Luminaria has a large opening in the back to accommodate a candle placed in the base of the ceramic. The top of the Luminaria is open.

Issue:

Are these two ceramic pumpkin holders classified as festive articles in Heading 9505, HTSUSA?

Law and Analysis:

The instant candle holders are orange and have faces cut in them resembling those of jack-o'-lanterns. The Explanatory Notes for Heading 9505, HTSUSA, states as follows:

This heading covers:

(A) Festive, carnival or other entertainment articles * * *. They include:
(1) Decorations such as festoons, garlands, Chinese lanterns, etc. * * * Cakes and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

Inasmuch as the orange color and the jack-o'-lantern face on each candle holder specifically identifies it with Halloween, which is a particular festival, each is classified in Heading 9505 as a festive article. (We note that each would be excluded from classification as a decorative ceramic article in Heading 6913 by virtue of Chapter Note 2(ij) of Chapter 69, which states "This chapter does not cover * * * articles of chapter 95 * * *.")

Holding:

Both the Halloween Candle Holder and the Luminaria are classified under the provision for festive, carnival or other entertainment articles: other: other, in subheading 9505.90.6000, HTSUSA, dutiable at the rate of 3.1 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:FC 958484 ASM
Category: Classification
Tariff No. 6913.90.5000

MS. BRENDA A. JACOBS
SHARRETT, PALEY, CARTER & BLAUVELDT
1707 L Street, N.W.
Washington, DC 20036

Re: Proposed modification of HRL 085343 concerning the tariff classification of ceramic luminaria.

DEAR MS. JACOBS:

This letter concerns the proposed modification of Headquarters Ruling Letter (HRL) 085343, dated December 7, 1989, in which you were advised of the classification of ceramic luminaria (identified as item no. 32-61-23) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

The subject articles are rectangular shaped ceramic luminaria. They are designed to look like paper bags having holes representing eyes, nose, and mouth. The luminaria have large openings in back to accommodate a candle placed in the base of the ceramic. The tops of the luminaria are open.

In HRL 085343, dated December 7, 1989, this item was held to be classifiable under sub-heading 9505.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other."

Issue:

Whether rectangular shaped ceramic luminaria are properly classified as "festive articles" under heading 9505, HTSUSA, or as "ornamental ceramic articles" under heading 6913, HTSUSA.

Law and Analysis:

Classification of merchandise under the HTSUSA, is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN's), which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 9505, HTSUSA, includes articles which are for "Festive, carnival, or other entertainment purposes." The EN's to 9505 state that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

* * * * *

In Headquarters Ruling Letter (HRL) 951897, issued August 26, 1992, it was determined that a "Glow Monster" jack-o-lantern, was classifiable in subheading 9505.90.60, HTSUSA, as a festive article, when the article, as a whole, met the following criteria:

1. is of nondurable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);

2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

Although this product appears to be of nondurable material which functions primarily as a decoration, we have determined that it does not meet the criteria established for classification as a "festive" article within subheading 9505.90, HTSUSA. The fact that the article is identified as "Ceramic Halloween candle holder" does not, in and of itself, convey the requisite association with Halloween.

These articles are, in fact, designed as "luminaria." Luminaria are ceramic or plastic bags with candles inside. They are popular in Latin America and the Southwest U.S. and are not traditionally used or associated with Halloween or any particular festival. This article is a rectangular shaped ceramic piece, designed to mimic a paper bag and to hold a lighted candle. There can be no question that these are luminaria and *not* round pumpkin jack-o'-lanterns which may be associated with the Halloween season. The orange color and cut-out eyes/mouth are not enough to convey the impression of jack-o'-lanterns rather than luminaria. *See* HRL 957954.

The EN's to heading 6913, HTSUSA, state that the heading " * * * covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments)." The EN's further state that heading 6913 covers:

(A) Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect, e.g.:

- (1) Statues, statuettes, bust, haut or bas reliefs, and other figures for interior or exterior decoration; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc., (animals, symbolic or allegorical figures, etc.); sporting or art trophies; wall ornaments incorporating fittings for hanging (plaques, trays, plates); medallions; firescreens; artificial flowers, fruit, leaves, etc.; wreaths and similar ornaments for tombs; knick-knacks for shelves or domestic display-cabinets.

* * * * *

It is our determination that the articles in question are specifically described by heading 6913, HTSUSA, which provide for statuettes and other ornamental ceramic articles. Clearly, these articles may be used for interior or exterior decoration and to ornament a mantelpiece or shelf. They may also be used as knickknacks in a display cabinet. Furthermore, the subject luminaria are wholly ornamental; other than providing a holder for a candle, they serve no utilitarian purpose. If candles are inserted, they would merely enhance the decorative value of these articles.

Holding:

The product identified as a "Ceramic Halloween candle holder" (item no. 32-61-23) is properly classifiable within subheading 6913.90.5000, HTSUSA, which provides for "Statuettes and other ornamental ceramic articles: Other: Other: Other." This provision is dutiable at 6.6 percent *ad valorem* under the general column one rate. HRL 085343, dated December 7, 1989, is hereby modified.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

**PROPOSED MODIFICATION OF RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF FOOTWEAR**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of certain footwear. Comments are invited on the correctness of the proposed ruling.

EFFECTIVE DATE: Comments must be received on or before May 17, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue NW, (Franklin Court) Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cathy Braxton, Textile Branch (202) 482-7048.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification for certain footwear.

In DD 815510, dated October 20, 1995, Style 81110-1, a men's slipper was classified in subheading 6403.59.60, of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other footwear with outer soles of leather; other. DD 815510 is set forth in Attachment B to this document.

Style 81110-1 was described in DD 815510 as a men's slipper, closed toe and heel, with leather upper and leather sole. After examining Style 81110-1, Customs Headquarters is of the opinion that the sole is attached to the upper by means of turned construction. Therefore, Customs intends to modify DD 815510 to reflect the proper classification of Style 81110-1 in subheading 6403.59.15, HTSUSA, which provides for

footwear with outer soles and uppers of leather, turn or turned construction. Proposed HQ 958696 modifying DD 815510 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 28, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New Orleans, LA, October 20, 1995.
CLA-2-64-NO:CO:FNIS D09
Category: Classification
Tariff No. 6403.59.60

REBECCA CHEUNG
MACY PRODUCT DEVELOPMENT
Eleven Penn Plaza
New York, NY, 10001

Re: The tariff classification of a men's slipper from China.

DEAR MS CHEUNG:

In your letter dated October 6, 1995, you requested a tariff classification ruling.

You submitted one sample, #81110-1, which is a men's slipper, closed toe and heel, with leather upper and leather sole. You state the sole is attached to the upper with a turned construction. However, this does not meet the turned construction definition within the meaning of the Harmonized Tariff Schedule of the U.S.

We are returning the sample as per your request.

The applicable subheading for the above shoe will be 6403.59.60, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear, in which the upper's external surface is predominantly leather, not including accessories or reinforcements; in which the outer sole is predominately leather or composition leather; which is other than "sports footwear"; which does not have a protective metal toe-cap; which the upper does not cover the wearer's ankle bone; which is other than turn or turned footwear, in which the sole is attached to the upper by means other than welt stitched construction; which is for men, youths and boys. The rate of duty, will be 8.5 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling transaction.

Please note the ruling (indicator) number shown on the top center of the first page of this letter. Including this number with the ABI transmission of the Customs entry may entitle you to paperless processing of type 01 entries for the merchandise covered by this ruling. The filer should make any software modifications necessary to implement this streamlined processing. If we can be of any assistance in this endeavor, please contact Customs ACS specialist Walter Vaughn at (504) 589-2082.

JOANNE C. CORNELISON,
Port Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:TC:TE 985696 CAB
Category: Classification
Tariff No. 6403.59.15

Ms. REBECCA CHEUNG
MACY PRODUCT DEVELOPMENT
Eleven Penn Plaza
New York, NY 10001

Re: Modification of DD 815510, dated October 20, 1995; Heading 6403.

DEAR MS. CHEUNG:

This is in response to your inquiry of October 26, 1995, requesting reconsideration of DD 815510, dated October 20, 1995, for a men's slipper under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was provided for examination.

Facts:

The submitted sample, Style No. 81110-1 is a men's slipper which contains a closed toe and heel with a leather upper and sole. The sole is attached to the upper by means of the turned construction. The parts are sewn together inside out and then turned right side out after construction. The Port of New Orleans Customs classified Style No. 81110-1 in subheading 6403.59.60, HTSUSA, which provides for other footwear with outer soles of leather; other. The importer contends that the upper part of the footwear is attached by turned construction and is properly classifiable in subheading 6403.59.15, HTSUSA, which provides for footwear with outer soles and uppers of leather; turn or turned footwear.

Issue:

What is the proper tariff classification for the subject merchandise?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 6403, HTSUSA, is the provision for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather. It is clear that the subject merchandise contains a leather upper and sole. In DD 815510 the subject merchandise was classified in subheading 6403.59.60, HTSUSA, which provides for other footwear with outer soles of leather. The importer claims that the lower and upper part of the footwear is attached by turned construction and is therefore, classifiable in the subheading that provides for turned construction within Heading 6403, HTSUSA. Customs defined "turned construction" in T.D. 93-88, Vol. 27 CUSTOMS BULLETIN No. 46, in the following manner:

In "turned" construction, the upper is stitched to the leather sole wrong side out before the shoe is turned right side out by hand. At that time, an "insole" may be cemented into the shoe, no significant stitching is done. If the "insole" is removed, you should be able to reverse the process and turn the shoe wrong side out again by hand. If the leather plug, approximately 3 inches long and 2 inches wide that covers the top of the front of the foot has edges that are turned up to be sewn to the side of the front of the shoe, the shoe is not "turned".

After careful examination by Headquarters, it is apparent that the sole of the subject merchandise is attached to the upper by means of turned construction. The parts are sewn together inside out and then turned right side out after construction. Therefore, Style No. 81110-1 is classifiable in subheading 6403.59.15, HTSUSA, which specifically provides for footwear with outer soles and uppers of leather having a turned construction.

Holding:

Based on the foregoing, Style No. 81110-1 is classifiable in subheading 6403.59.15, HTSUSA, which provides for footwear with outer soles and uppers of leather; turn or turned footwear. The applicable rate of duty is 2.5 percent *ad valorem*.

DD 815510 is hereby modified.

In accordance with section 625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman

Jane A. Restani

Thomas J. Aquilino, Jr.

Nicholas Tsoucalas

R. Kenton Musgrave

Richard W. Goldberg

Donald C. Pogue

Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

PUBLIC VERSION

Slip Op. 96-52)

RAELAYNE A. PAULING, PLAINTIFF v. ROBERT B. REICH,
U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 93-07-00415

[Plaintiff moves this Court to remand the Department of Labor's negative determination on her petition for certification of trade adjustment assistance eligibility. *Held*: Plaintiff failed to satisfy the statutory requirements for petitioning on behalf of a "group of workers" who were dismissed or threatened with dismissal. Plaintiff's motion is denied. Defendant's motion to dismiss is granted.]

(Decided March 11, 1996)

Steven Tinsley for plaintiff.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Michael S. Kane*), for defendant.

OPINION

INTRODUCTION AND BACKGROUND

MUSGRAVE, Judge: On March 22, 1993, Plaintiff Raelayne A. Pauling a former employee of Maynard Oil Company ("Maynard"), filed a petition with the Secretary of Labor ("Labor") seeking certification to apply for trade adjustment assistance pursuant to 19 U.S.C. § 2271 (1988). Plaintiff was laid off from Maynard in April of 1992, where she was engaged in administrative functions. She filed her petition seeking certification for trade adjustment assistance in March of 1993. The two other workers named on the petition were dismissed from Maynard in August and October of 1991. Prior to plaintiff's petition, all workers from a wholly owned subsidiary of Maynard, BDK Drilling Company, had been certified as eligible for trade adjustment assistance due to the liquidation of BDK. Labor denied plaintiff's petition (*Negative Determination Regarding Eligibility To Apply For Worker Adjustment Assistance*, 58

Fed. Reg. 21319 (April 20, 1993)), citing her failure to petition on behalf of a "group" of workers as required by statute. Labor also denied plaintiff's subsequent request for reconsideration (*Dismissal of Application for Reconsideration*, 58 Fed. Reg. 32550 (June 10, 1993)).

This Court has jurisdiction to review Labor's determination pursuant to 19 U.S.C. § 2395(c). Negative determinations by Labor denying certification for trade adjustment assistance eligibility are upheld by this Court if they are supported by substantial evidence. 19 U.S.C. § 2395(b) "Substantial evidence is something more than a 'mere scintilla,' and must be enough reasonably to support a conclusion." *Ceramica Region Montana, S.A. v. United States*, 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986), *aff'd*, 5 Fed. Cir. (T) 77, 810 F.2d 1137 (1987) (citations omitted). Plaintiff requests a remand on the basis that Labor performed an inadequate investigation which caused it to conclude erroneously that BDK's employees were not part of the group on whose behalf her petition was filed. "A reviewing court may remand a case and order the Secretary [of Labor] to further investigate if 'good cause [is] shown.' 19 U.S.C. 2395(b). 'Good cause' exists if the Secretary's chosen methodology is so marred that [his] finding is arbitrary or of such a nature that it could not be based on substantial evidence." *Former Employees of Linden Apparel Corp. v. U.S.*, 13 CIT 467, 469, 715 F. Supp. 378, 381 (1989) (quotations omitted).

DISCUSSION

19 U.S.C. §§ 2271(a) and 2272(a) require that a petition for trade adjustment assistance be filed on behalf of a "group of workers," which the implementing regulations define as "three or more workers in a firm or an appropriate subdivision thereof." 29 C.F.R. § 90.2. Another statutory provision, 19 U.S.C. § 2273(b)(1), declare that

[a] certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 2291 of this title occurred—(1) more than one year before the date of the petition on which such certification was granted * * *.

These rules entail that a valid petition must be signed by three or more workers who had been separated from the firm or an appropriate subdivision thereof within one year prior to the petition's filing.

Furthermore, before certifying a group of workers, Labor must determine that "a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated." 19 U.S.C. § 2272(a)(1). This inquiry is additional and separate from the formal requirements governing the submission of petitions: even if the workers named on a petition are potentially eligible for certification, Labor may not certify a group for trade adjustment assistance unless a significant proportion or number of the firm's workers have been dismissed or are threatened with dismissal.

The two workers other than plaintiff whose names appeared on the subject petition were dismissed from Maynard in August and October of 1991, more than a year before the filing of the petition; therefore, they were not eligible for certification under 19 U.S.C. § 2273(b)(1). This fact alone establishes that plaintiff's petition did not satisfy the statutory mandate that petitions be filed on behalf of a group of workers. Even if the two other individuals named on the petition had been eligible for trade adjustment assistance, Labor independently determined that a significant number or proportion of Maynard's employees had not been dismissed and were not threatened with dismissal. Labor came to this conclusion based on written information that it received from Maynard's Vice President of Finance stating that plaintiff was the only employee out of twenty-five Maynard employees who had been dismissed in the previous fifteen months. Labor also determined that Maynard planned no additional dismissals. The nature and extent of the investigation in trade adjustment assistance matters rests within the sound discretion of Labor. *Miller v. Donovan*, 620 F. Supp. 712, 9 CIT 473 (1985); *Woodrum v. Donovan*, 544 F. Supp. 202, 4 CIT 46 (1982). Obtaining the relevant information from Maynard's Vice President of Finance was not a marred or arbitrary methodology that vitiated the substantiality of that information. Based on the adequate evidence Labor accumulated in its investigation, including the information regarding Maynard employment issues that Labor gleaned from its correspondence with Maynard, Labor's negative determination was supported by substantial evidence.

Plaintiff contends that her administrative position was eliminated due to the liquidation of Maynard's wholly owned subsidiary, BDK Drilling Company, whose operations allegedly generated a substantial portion of her administrative duties. Plaintiff argues that these workers should be subsumed under the group on whose behalf her petition was filed because BDK was an "appropriate subdivision" of Maynard for purposes of the statute. However, Labor determined that Maynard had minimum dealings with BDK, once again based on information supplied by Maynard's Vice President of Finance. [

]. Plaintiff submitted an affidavit dated June 1, 1994 to this Court in support of her petition for remand in an effort to refute Labor's determination that there were minimum dealings between Maynard and BDK. Plaintiff stated therein that (1) plaintiff's administrative duties at Maynard included typing authorizations for BDK expenditures, which authorizations required approval by Maynard executives; (2) plaintiff prepared daily drilling reports of BDK activities; and (3) plaintiff has personal knowledge of the fact that Maynard staff managed personnel functions for BDK's eighty-six employees. The appropriate time for submitting this information would have been in connection with plaintiff's request for administrative reconsideration, wherein plaintiff argued that "a significant portion of my job duties were directly related to the operations of the subsidiary, BDK drilling."

The whole purpose of the reconsideration procedure is to allow petitions to demonstrate to the administrative authorities that Labor erred in its factual or legal findings. Since the affidavit was not submitted at the appropriate time to the Labor officials vested with the authority to conduct the investigation, it is not part of the administrative record and is therefore not properly before the Court. Even if this information had been before Labor in its initial investigation or subsequent review for reconsideration, Labor possessed more than a mere scintilla of genuine and independent evidence allowing it to conclude that BDK was not an appropriate subdivision of Maynard for the purposes of the statute. therefore, Labor's findings with regard to the relationship between Maynard and BDK were supported by substantial evidence.

CONCLUSION

Plaintiff's petition was legally insufficient because the two other individuals named on the petition were not eligible for trade adjustment assistance certification. The evidence Labor collected pursuant to a reasonable investigative methodology constituted substantial evidence both that BDK was not an appropriate subdivision of Maynard for purposes of the statute and that a substantial number or portion of Maynard's workers had neither been dismissed nor threatened with dismissal. The Court holds that plaintiff has failed to demonstrate good cause for further investigation and that Labor's negative determination was supported by substantial evidence.

(Slip Op. 96-58)

MELEX USA, INC. AND PEZETEL, LTD., PLAINTIFFS *v.*
UNITED STATES, DEFENDANT

Court No. 92-04-00298

(Dated March 22, 1996)

ORDER OF AFFIRMANCE AND DISMISSAL

MUSGRAVE, *Judge*: Upon consideration of the parties' unanimous assent to the results of the Redetermination on Remand by the International Trade Administration dated February 12, 1996, and upon consideration of all papers and proceedings herein, it is hereby

ORDERED AND ADJUDGED that the remand determination be affirmed; and it is further

ORDERED AND ADJUDGED that this final judgment affirming those results be entered by the Clerk of this Court; and it is further

ORDERED AND ADJUDGED that the subject action be and hereby is dismissed.

(Slip Op. 96-59)

TELECTRONICS PACING SYSTEMS, INC., PLAINTIFF v.
UNITED STATES, DEFENDANT

Court No. 94-07-00413

[Plaintiff's motion to vacate order of dismissal and suspend denied.]

(Dated March 29, 1996)

McDermott, Will & Emery (Robert G. Kalik) and *Feldman, Gale & Weber (James A. Gale)* for the plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Barbara Silver Williams*) for the defendant.

MEMORANDUM AND ORDER

AQUILINO, Judge: The plaintiff interposes a motion to vacate an order dismissing the above action and to place it on the suspension calendar for *Telectronics Pacing Systems, Inc. v. United States*, Consol. Ct. No. 91-07-00503, which has been designated a test case. The defendant does not object to grant of the motion, but this acquiescence is not automatically dispositive.¹

This action was dismissed pursuant to CIT Rule 83(c), which provides, in pertinent part:

DISMISSAL FOR LACK OF PROSECUTION.

An action not removed from the Reserve Calendar within the 18-month period shall be dismissed for lack of prosecution and the clerk shall enter an order of dismissal without further direction from the court unless a motion is pending.

The Clerk correctly carried out this mandate. This action was placed on the reserve calendar at the time the summons was filed in July 1994. When no prosecution ensued, on February 29, 1996 the Clerk dismissed.

Subsection (d) of Rule 83 does permit an extension of time to remain on the reserve calendar at the discretion of the court for "good cause shown why the action was not removed within the 18-month period". Moreover, this court "favors efficient resolution of actions under the rules and will work with opposing counsel who pursue their responsibilities to that end with due diligence". *E. Gluck Corp. v. United States*, 13 CIT 922, 923 (1989) (motion to extend time on suspension disposition calendar denied because the plaintiff did not make a showing sufficient to conclude that failure to meet deadline could not have been avoided during the time already allotted under the rules).

In the matter at bar, the court cannot conclude that the mere filing of plaintiff's motion on March 18, 1996, fully 20 months after the action was commenced, constitutes the requisite showing. And even if the apparent neglect were excusable, plaintiff's motion does not present

¹ See, e.g., *Fada Industries, Inc. v. United States*, 14 CIT 645 (1990).

any facts in mitigation, and upon which an affirmative decision could be based. *Cf. Avanti Products, Inc. v. United States*, 16 CIT 453 (1992). Clearly, by not providing the court with any explanation for the delay (or with a formal motion under Rule 83(d) for an extension), the plaintiff is still not prosecuting its cause with the degree of diligence required under the circumstances. *See, e.g., E. Gluck Corp. v. United States*, 14 CIT 271 (1990). As this court was constrained to remind counsel in *Avanti*, motions

must be presented in such a way as to convince the court that grant is appropriate. * * * The absence of any alleged supportive facts is all the more critical in view of the precise nature of the relief the plaintiff seeks. Indeed, a party plaintiff has a primary and independent obligation to prosecute any action brought by it—from the moment of commencement to the moment of final resolution. That primary responsibility never shifts to anyone else and entails the timely taking of all steps necessary for its fulfillment.

16 CIT at 453, 453-54 (citations omitted). Whichever

path is chosen for a given action must be supportable, both as a matter of due diligence and on the facts and the law underlying that particular matter. Otherwise, the action may be subject to dismissal for lack of prosecution.

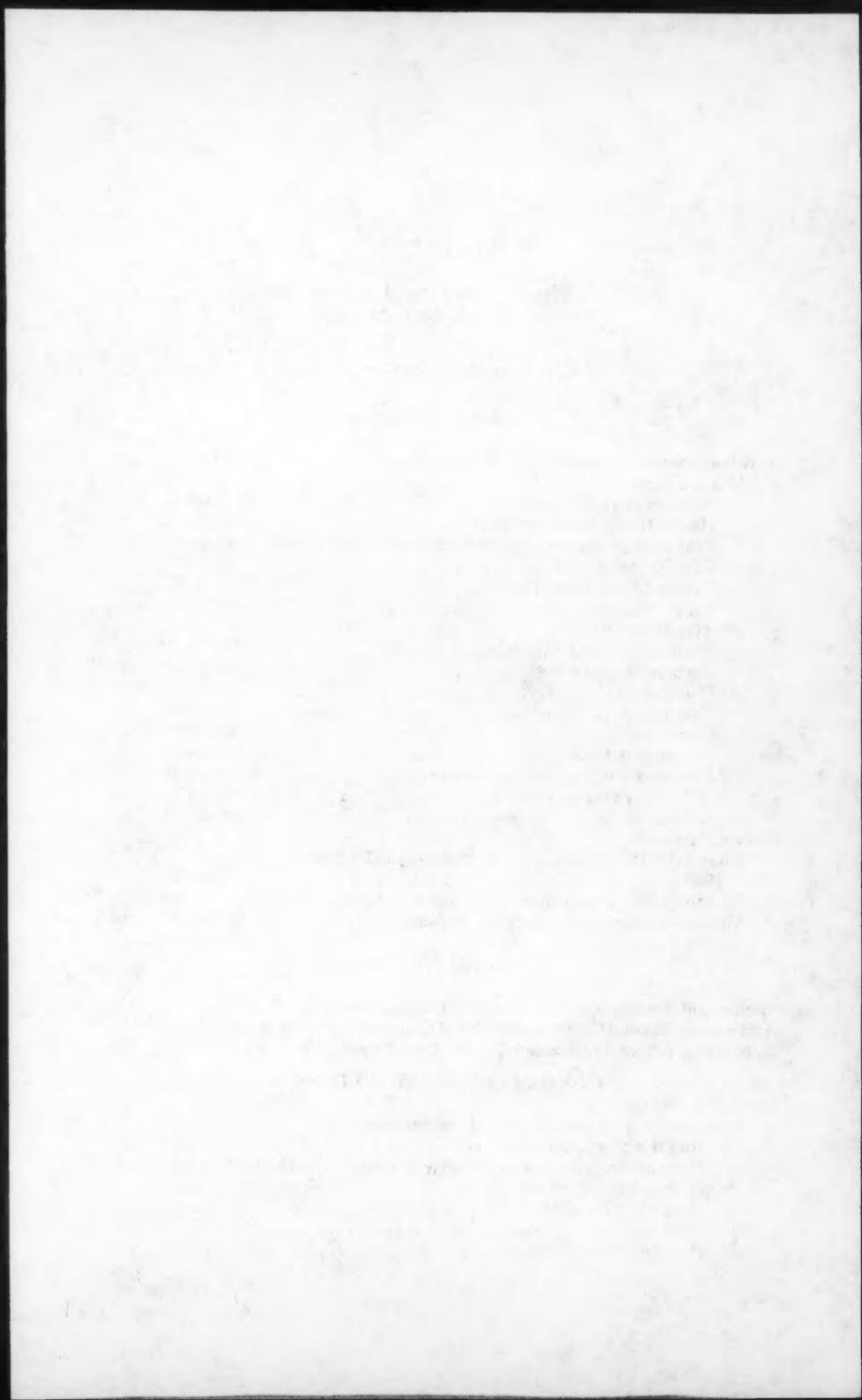
E. Gluck Corp. v. United States, 13 CIT at 923.

In view of the foregoing, plaintiff's motion to vacate the order of dismissal and to place this action on the above-cited suspension calendar must be, and it hereby is, denied.

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C96/24 3/26/96 DiCarlo, J.	ABB Power Systems, Inc.	93-10-00708	\$654.90.00 3%	\$654.90.00 Duty free	ABB Power Transmission v. United States (Slip Op. 95-141) Court No. 91-12-00864	Seattle Thritor valves containing 6 single valve unites
C96/25 3/26/96 DiCarlo, J.	ABB Power Systems, Inc.	94-06-00326	\$654.90.00 3%	\$654.90.00 Duty free	ABB Power Transmission v. United States (Slip Op. 95-141) Court No. 91-12-00864	Portland, Baltimore Thritor valves containing 6 single valve unites





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